

FILED

SEP 28 2006

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA1                   UNITED STATES BANKRUPTCY COURT  
2                   EASTERN DISTRICT OF CALIFORNIA

4       In re:    )     Case No. 06-21554-D-13L  
 5       Jackie Ray Elston,    )     Docket Control No. [none]  
 6   )  
 7   Debtor.   )     Date: Sept. 26, 2006  
 7   )     Time: 1:00 p.m.  
 7   )     Dept: D

MEMORANDUM DECISION

9       On July 12, 2006, Jackie Ray Elston (the "Debtor") filed her  
 10 Motion for [Order] Determining Value of Collateral and Allowing  
 11 Deficiency as an Unsecured Claim (the "Motion"). In the Motion,  
 12 the Debtor requests that the collateral of Wells Fargo Financial  
 13 ("WFF") be valued and the deficiency amount be allowed as an  
 14 unsecured claim in her chapter 13 case. Because the Motion is  
 15 procedurally defective, as explained below, the court will deny  
 16 the Motion without prejudice.

17       The Motion is a request under section 506(a) of the  
 18 Bankruptcy Code for determination of the value of WFF's  
 19 collateral and secured claim in the Debtor's case. The Motion is  
 20 a contested matter governed by Local Bankruptcy Rule ("LBR")  
 21 9014-1, and by Federal Rule of Bankruptcy Procedure ("Rule")  
 22 3012.

23       Under LBR 9014-1(c), "a Docket Control Number (designated as  
 24 DC No.) shall be included by all parties immediately below the  
 25 case number on all pleadings and other documents." The Docket  
 26 Control Number is critical in aiding the court to identify and  
 27 review the various documents filed in each bankruptcy proceeding.  
 28 The Debtor did not include such a number in the Motion.

1       Under Rule 3012, a motion to value a secured claim must be  
2 served on the holder of the secured claim, which in this case is  
3 WFF.<sup>1</sup> As reflected in this court's General Order 05-03, ¶ 3(b),  
4 which among other things governs motions to value collateral that  
5 are served with a Chapter 13 Plan, service on the holder of the  
6 secured claim must be accomplished pursuant to Rule 9014, which  
7 by reference incorporates Rule 7004.

8       Where notice of a motion to value collateral of a corporate  
9 entity, such as WFF, is served by mail, the moving party is to  
10 serve the motion, notice, and supporting documents, including any  
11 declaration, in the manner stated in Rule 7004(b) (3): addressed  
12 "to the attention of an officer, a managing or general agent, or  
13 to any other agent authorized by appointment or by law to receive  
14 service of process."<sup>2</sup> Case law interpreting Rule 7004(b) (3)  
15 provides that service can be accomplished by properly addressing  
16 and dispatching first-class mail to a corporate entity's  
17 designated agent for service of process, or at the corporate  
18 entity's address of record. See e.g. In re Villar, 317 B.R. 88  
19 (B.A.P. 9th Cir. 2004) (motion to avoid judgment lien). Service  
20 can also be effected at an address specified by the creditor for  
21 the bankruptcy case, including by way of the entity's Proof of  
22 Claim filed in the case.

23       Here, the Debtor's Certificate of Service by Mail, filed  
24 July 12, 2006, indicates that the Motion and the Notice of  
25 \_\_\_\_\_

26       1. Applicable rules may entitle other parties to service,  
such as the trustee and parties that have requested service.

27       2. Rule 7004 provides for alternative methods of service not  
commonly used in bankruptcy cases, as well as additional service  
requirements in particular circumstances not discussed here.

1 Hearing (but not the Declaration of Debtor) were served on WFF.  
2 through its Bankruptcy Division, addressed to "Post Office Box  
3 98765, Las Vegas, Nevada 98765." The records of the California  
4 Secretary of State, which can readily be searched by the public  
5 through the website at <http://kepler.ss.ca.gov/list.html>,  
6 indicate that several Wells Fargo Financial entities have an  
7 agent for service that is located in Sacramento, California, and  
8 that a corporate address of record is located in Des Moines,  
9 Iowa. Further, the Proofs of Claim filed by WFF in the Debtor's  
10 case state an address for service in Kansas City, Missouri.<sup>3</sup> The  
11 Debtor, however served the Motion only at the address in Las  
12 Vegas, which does not meet the requirements of Rule 7004(b)(3).

13 Three defects thus prevent the court from granting the  
14 Motion, even though no opposition was filed: (1) the failure to  
15 use a Docket Control Number as required by Local Bankruptcy Rule  
16 9014-1(c), (2) the failure to serve the Declaration of Debtor on  
17 WFF, as well as the Motion and the Notice of Hearing, and (3) the  
18 failure to serve WFF using at least one of the addresses,  
19 directed to the appropriate party, as stated in applicable  
20 provisions of Rule 7004.

21 The court therefore will deny the Motion, without prejudice.  
22 This will enable the Debtor to file and serve a new motion to  
23 value WFF's collateral with necessary supporting documents.  
24

25 Dated: Sept. 28, 2006

*Robert Bardwil*  
ROBERT S. BARDWIL  
United States Bankruptcy Judge

28 3. The Proofs of Claim and any Requests for Special Notice  
filed in the case can be viewed at the Clerk's office.

**CERTIFICATE OF MAILING**

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document on today's date to each of the parties listed below:

Office of the US Trustee  
501 "I" Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

Lawrence Loheit  
P.O. Box 1858  
Sacramento, CA 95812-1852

Jackie Ray-Elston  
3313 Gray Mare Way  
Antelope, CA 95843

DATE: SEP 28 2006

Andrea Lovgren  
Deputy Clerk